Fall 2021 Newsletter

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FROM THE CHAIR

Covid-19 Misinformation: A Position Statement

Maroulla S. Gleaton, M.D., Chair

The Federation of State Medical Boards ("FSMB") issued the following statement in response to a dramatic increase in the dissemination of Covid-19 vaccine misinformation and disinformation by physicians and other health care providers:

> Physicians who generate and spread COVID-19 vaccine misinformation or disinformation are risking disciplinary action by state medical boards, including the suspension or revocation of their medical license. Due to their specialized knowledge and training, licensed physicians possess a high degree of public trust and therefore have a powerful platform in society, whether they recognize it or not. They also have an ethical and professional responsibility to practice medicine in the best

> interests of their patients and must share information that is factual, scientifically grounded and consensus-driven for the betterment of public health. Spreading inaccurate COVID-19 vaccine information contradicts that responsibility, threatens to further erode public trust in the medical profession and puts all patients at risk.

The American Board of Family Medicine ("ABFM"), the American Board of Internal Medicine ("ABIM"), and the American Board of Pediatrics ("ABP") issued a joint statement in support of FSMB's position.https://www.abim.org/media-center/press-releases/joint-statement-on-dissemination-of-misinformation

The Maine Board of Licensure in Medicine ("BOLIM") supports the position taken by the FSMB regarding Covid-19 vaccine misinformation spread by physicians and physician assistants. The Board also applies this standard to all misinformation regarding Covid-19, including non-verbal treatments and preventative measures. Physicians and physician assistants who spread Covid-19 misinformation, or practice based on such misinformation, erode public trust in the medical profession and may endanger patients.

Covid-19 is a disease process which physicians and physician assistants should evaluate and treat in the same manner as any other disease process. Assessments and treatments of Covid-19 by physicians and physician assistants will be evaluated by the BOLIM in the same manner it evaluates assessments and treatments of any other disease process. Treatments and recommendations regarding Covid-19 that fall below the standard of care as established by medical experts and legitimate medical research are potentially subject to disciplinary action.

Similarly, a physician or physician assistant who issues a vaccine exemption without conducting an appropriate examination and without a finding of a legitimate medical reason supporting such an exemption within the standard of care may be placing their licenses at risk of disciplinary action.

The BOLIM encourages physicians and physician assistants to address Covid-19 misinformation when encountered. The American Medical Association ("AMA") supports the fight against Covid-19 misinformation, and provides resources for physicians that explain how to counter misinformation, and why it is important to do so.

https://www.ama-assn.org/about/leadership/defeating-misinformation-key-ending-pandemic

https://www.ama-assn.org/delivering-care/public-health/surgeon-general-how-doctors-can-fight-covid-19-misinformation

https://www.ama-assn.org/system/files/2021-02/covid-19-vaccine-guide-english.pdf

WHAT EVERYONE SHOULD KNOW

OCME looking for Field Medical Examiners

The Office of Chief Medical Examiner (OCME) is looking for licensed medical providers, who are residents of Maine, and who may be interested in becoming a Field Medical Examiner. The OCME is located in Augusta and serves the entire state of Maine. It is the statutory responsibility of the OCME to investigate all violent, criminal, suspicious, and deaths of apparent undetermined causes or manners. Field Medical Examiners work on a fee-for-service basis; rates of payment are set by statute. They are responsible for conducting external examinations, collecting specimen samples, writing a report of findings, and completing death certificates on various types of deaths. The most common types of death include, suicides, motor vehicle accidents and suspected overdoses. External examinations are conducted in hospitals and funeral homes in the Field Medical Examiners local area. A Field Medical Examiner also has the authority to review and sign "Medical Examiner's Release of Human Remains" forms for cremation or removal from state. If you have any interest in becoming a Field Medical Examiner, please contact the OCME at 207-624-7180 or ocme@maine.gov for more details.

CONTINUED SCAM ALERT

We alerted you to scams being carried out against health care providers in the Spring 2021 newsletter. We continue to receive calls from our licensees about attempted scams at a regular rate. Many of those scams involve a caller from someone who identified himself as being from the Board of Medicine. These calls often involve threats that if a fine is not paid immediately the provider will lose their license. Calls such as this are scammers who have been attempting to obtain personal information from licensees by pretending to be calling from the Board. Scammers who obtain personal information such as date of birth, Social Security Number, and home address can use that information to commit identity theft and cause significant financial problems for the victim.

A new take on the scam is an e-mail from the spouse of a former patient (never named). The spouse indicates that the provider took care of the spouse's partner in their dying days and they were so kind the spouse can't stop thinking about the provider. They ask to start an e-mail relationship which, if continued could lead to requests for personal information or money. Sample Scam E-mail

If you receive a suspicious call or e-mail, you should not share any personal information over the phone or by email. Licensees who think they may be a victim of a scam or attempted fraud should contact the Consumer Protection Division of the Office of the Attorney General toll-free at 800-436-2131 (TTY 711) or online at: https://www.maine.gov/ag/consumer/complaints/.

In addition, the Federal Bureau of Investigation (FBI) provides the following tips about how to avoid becoming a victim of a scam:

How to avoid being victimized by impostors posing as regulators

The FBI lists four best practices for licensees to avoid becoming a victim of an extortion scheme:

- Use official websites and official phone numbers to independently verify the authenticity of communications from alleged law enforcement or medical board officials.
- Independently contact those boards or law enforcement agencies to confirm the identity of the person(s) contacting the provider.
- Do not provide personal identifying information (Social Security Number, date of birth, or financial information) in response to suspicious emails, phone calls, or letters and do not provide professional information (medical license number, NPI number, or DEA license number).
- Be wary of any request for money or other forms of payment regarding supposed criminal investigations by alleged law enforcement agencies or regulatory entities.

For more information visit this link to the FBI's website: https://professionallicensingreport.org/fbi-impostors-posing-as-regulators-threaten-medical-licensees-nationwide-with-license-suspension/.

ADVERSE ACTIONS

Adverse Actions

In 2020 the Board reviewed 303 complaints and investigative reports – an average of 25 per meeting. While the number of complaints received by the Board remains consistently large, the number of complaints that result in adverse action is quite small. In most cases, the conduct resulting in adverse action is egregious or repeated or both.

The majority of complaints received by the Board continue to center around patient dissatisfaction with the communication of the physician/physician assistant. Patients who feel that they were not listened to, ignored, or disrespected (talked down to) are more likely to file a complaint with the Board than patients who may believe their treatment was not optimal but have a good relationship with their physician/physician assistant. The Board developed guidelines entitled "Communicating with Patients" (recently published in the *Journal of Medical Regulation* and reproduced in this issue of BOLIM), which licensees are encouraged to review: https://www.maine.gov/md/sites/maine.gov.md/files/inline-files/COMM_WITH_PTS.pdf.

The Board's complaint process is relatively straight-forward. FAQs about the complaint process are available on the Board's website: https://www.maine.gov/md/complaint/discipline-faq. Brochures regarding the complaint process are also available on the Board's website: https://www.maine.gov/md/resources/forms.

Upon receipt of a complaint, it is forwarded to the licensee for a written response and a copy of the medical records. In general, the licensee's response is shared with the complainant, who may submit a reply. The Board reviews the complaint file once completed, and may take any of the following actions:

- Dismiss
- Dismiss and issue a letter of guidance
- Further investigate
- Invite the licensee to an informal conference
- Schedule an adjudicatory hearing

The following adverse actions are being reported for the purpose of educating licensees regarding ethical and/or legal issues that can lead to discipline, and to inform licensees of any limitations or restrictions imposed upon scope of practice.

Arthur Blake, M.D. License #MD18331 (Date of Action 10/12/2021)
On October 12, 2021, the Board and Dr. Blake entered into a Consent Agreement for unprofessional conduct, incompetence, and violation of Board rules related to controlled substance prescribing. The Consent Agreement imposes probation for at least 5 years during which Dr. Blake must, for at least 6 months, engage both a Board-approved Physician Practice Monitor and participate in a controlled substances stewardship program with monthly reports to the Board.

Kevin F. Strong, M.D. License #MD17952 (Date of Action 10/03/2021)
On October 3, 2021, the Board met to address Dr. Strong's failure to submit to a psychiatric and substance misuse evaluation ordered by the Board. As permitted by Maine law, the Board determined this failure constituted an admission to the allegations that led to the ordered evaluation and voted to suspend Dr. Strong's license immediately until Dr. Strong meets the conditions of the psychiatric and substance misuse evaluation, requests a hearing to demonstrate that he can resume the competent practice of medicine and, following a hearing, the Board finds that Dr. Strong can resume safe practice of medicine.

Elmer H. Lommler, M.D. License #MD9862 (Date of Action 09/14/2021)
On September 14, 2021, the Board voted to lift the stay of suspension of Dr. Lommler's license to practice medicine in accordance with its Decision and Order dated March 12, 2021 for Dr. Lommler's noncompliance with two conditions of his probation. In accordance with the Decision and Order, the suspension of Dr. Lommler's license shall continue until he either comes into compliance with the conditions of probation or the remaining period of 616 days of suspension has elapsed.

Alan D. M. Ross, M.D. License #MD14778 (Date of Action 09/15/2021)
On September 15, 2021, the Board and Dr. Ross entered into a Consent Agreement for misrepresentation, incompetence, unprofessional conduct, and for violation of Board Rule Chapter 10 Sexual Misconduct rules. The Board imposed a reprimand, the permanent surrender of Dr. Ross' medical license, and a requirement that Dr. Ross provide a copy of the consent agreement to any licensing jurisdiction with which he holds or applies for a professional license, any health care entity or credentialing agency that employs him, and to every patient in any jurisdiction where he holds a license to practice medicine prior to providing any health care services.

Susan D. Paul, M.D. License #MD19838 (Date of Action 09/15/2021)
On September 15, 2021, the Board and Dr. Paul entered into a Consent Agreement for unprofessional conduct related to controlled substance prescribing, medical decision-making, and medical recordkeeping which requires that Dr. Paul engage a Board-approved Physician Practice Monitor for a period of not less than one year with quarterly written reports to the Board.

Kevin F. Strong, M.D. License #MD17952 (Date of Action 09/10/2021)
Based on preliminary findings of fact, the Board immediately suspended Dr. Strong's medical license to practice as a physician in the State of Maine based upon: a) misuse of alcohol, drugs, or other substances that has resulted or may result in the licensee performing services in a manner that endangers the health or safety of patients; b) mental or physical condition that has resulted or may result in the licensee performing services in a manner that endangers the health or safety of patients; c) engaging in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public; d) engaging in conduct that evidences a lack of knowledge or inability to apply principles or skills to carry out the practice of medicine; and e) unprofessional conduct.

Calvin P. Fuhrmann, M.D. License #MD14675 (Date of Action 08/10/2021)
On August 10, 2021, the Board amended Dr. Fuhrmann's September 10, 2019 Consent Agreement by inserting paragraph 12(h) to read that Dr. Fuhrmann admitted to violating the practice limitation contained in paragraph 12(f) of the Consent Agreement as amended by failing to limit his practice of medicine to addiction treatment only in violation of 32 M.R.S. 3282-A(2)(P) (noncompliance with a consent agreement of the Board). Dr. Fuhrmann accepted and the Board imposed a censure for his noncompliance with the Consent Agreement as amended.

Frank Richter, M.D. License #MD21365 (Date of Action 07/13/2021)
On July 13, 2021, the Board and Dr. Richter entered into a Consent Agreement for misuse of alcohol and unprofessional conduct. Dr. Richter's license is placed on probation for a period of five years with requirements including maintaining enrollment in the Medical Professional Health Program and engaging in individual therapy with a Board-approved psychiatrist.

Virginia A. Eddy, M.D. License #MD15532 (Date of Action 07/13/2021)
On July 13, 2021, the Board approved Dr. Eddy's request to convert her medical license to an Emeritus License while under investigation for alleged unprofessional conduct and substance misuse.

Communicating with Patients Guidelines

The *Journal of Medical Regulation* has published "Communicating with Patients: Guidelines from the Maine Board of Licensure in Medicine." The article is available online at: https://meridian.allenpress.com/jmr/issue/106/4.

LICENSING ISSUES

Update to License Application Questions: Removing the Stigma of Mental Health and Protecting the Public

The Maine Board of Licensure in Medicine ("BOLIM") recently updated questions on its applications related to physician and physician assistant health and wellness. Specifically, the BOLIM removed a question inquiring specifically about an applicant's current mental health and any language related to voluntary and confidential participation in the Medical Professionals Health Program ("MPHP"). The updated application question reads as follows:

> Health and wellness is vital for physicians/physician assistants and the patients they serve. Physicians/physician assistants who fail to seek treatment when necessary put themselves and their patients at risk. The Board strongly encourages physicians/physician assistants to take steps, including seeking treatment, when necessary to establish and maintain health and wellness. One resource available to physicians/physician assistants is the Medical Professionals Health Program (MPHP). More information about the MPHP can be found at: http://www.mainemphp.org/. The purpose of the following questions is to determine the current fitness of an applicant to safely practice and concern current medical conditions that impair or may impair the ability to safely practice. "Medical condition" includes any physiological or psychological disease, disorder, syndrome, or condition. Information regarding medical conditions provided by applicants is treated confidentially by the Board. The mere fact of treatment for current medical conditions is not, by itself, a basis on which an applicant is ordinarily denied licensure when he/she has demonstrated personal responsibility and maturity in dealing with the medical condition(s). The Board may deny, limit, or condition a license for applicants whose ability to safely practice or whose behavior, judgment, and understanding is currently impaired to the degree that patient safety is at risk.
> a. Do you have a medical condition that currently impairs your ability to safely and competently practice medicine?
> b. Do you currently use any chemical substance, including alcohol, which in any way impairs or limits your ability to practice your profession with reasonable skill and safety?
> If either of your answers to questions 9(a-b) is "Yes," please provide a detailed explanation.

The BOLIM is charged with the mission of licensing and regulating allopathic physicians and physician assistants and protecting the public from a currently impaired applicant or licensee. That said, the BOLIM recognizes that physicians and physician assistants, like any other members of society, are susceptible to all kinds of medical conditions – physical or mental. Having a medical condition does not necessarily mean that an applicant or licensee is impaired. Like anyone else, physicians and physician assistants can suffer from and be treated for depression, anxiety, or burnout and not compromise patient care or safety. Applicants and licensees who have a medical condition - physical or mental - that is being appropriately treated and that does not impair their ability to practice with reasonable skill and safety do not have to disclose that information on applications for licensure or re-licensure.

The BOLIM supports the de-stigmatization of mental conditions in physicians and physician assistants and encourages those who may be suffering from one to seek care and treatment – both for their well-being and to avoid an unnecessary progression of the condition to the point of impairment that compromises patient safety. The BOLIM recognizes that the Covid-19 pandemic has placed even more significant stress on physicians and physician assistants and strongly encourages them to seek care and treatment when needed.

The BOLIM made the changes to the mental health and MPHP questions on its license applications in an effort to support and encourage physicians and physician assistants to seek care for mental conditions – just as they would for physical impairment. There have been numerous articles that assert that physicians avoid seeking treatment for mental conditions in order to avoid having to disclose that fact on license applications due to stigma and fear about denial or loss of licensure. These articles argue that by removing specific questions regarding mental conditions and focusing on current medical conditions that impair the ability to practice safely, licensing boards can reduce stigma and promote health and wellness by reducing the fear and anxiety of applicants and licensees who seek and receive treatment. The BOLIM's changes to its license application questions are in line with the "Report and Recommendations of the Workgroup on Physician Wellness and Burnout" adopted as a policy of the Federation of State Medical Boards in April 2018: https://www.fsmb.org/siteassets/advocacy/policies/policy-on-wellness-and-burnout.pdf.

HEALTH AND WELLNESS

Health and Wellness – The Journey Continues

The Covid-19 pandemic and its sequelae have stretched health care delivery systems' ability to provide care and treatment. Physicians and physician assistants are part of the critical foundation of care delivery in health care systems. Without them, the health care systems would effectively cease to exist. It would seem obvious then that these systems should be designed to support the health and wellbeing of the people who work in them.

Now, more than ever, is the time for health care systems to support physician and physician assistant health and wellness – to help them to care for themselves and their families. Such support is imperative to maintaining emotional and physical health, a sense of balance, and resilience. Physicians and physician assistants are subject to the same human limitations that affect all human beings and are susceptible to the same medical conditions.

The Board encourages all licensees in leadership positions in health care systems to reflect upon the ways in which they can ensure that their institutions care for physician and physician assistant health and wellness with the same spirit and dedication that they extend to their patients. Everyone will be the better for it.

The Mayo Clinic published an article in October 2021 entitled, *Physician Well-being 2.0: Where Are We and Where Are We Going?* that describes the way in which health care organizations dealt with physician distress in the past, ways they are addressing it in the present, and ways to expand these efforts in the future. Mayo Clin Proc. October 2021.96(10):2682-2693 https://doi.org/10.1016/j.mayocp.2021.06.005 CC BY-NC-ND license.

The Past

The article describes a past "era of distress" when there was a "lack of awareness, or even deliberate neglect, of physician distress" and where physicians were "expected to be superhuman," and worked in a culture that "created a powerful disincentive to attend to personal health or needs" (i.e., perfectionism) and labeled physicians seeking change as "uncommitted or weak." The article summed up this era:

> This framework discouraged vulnerability with colleagues, encouraged physicians to project that they had everything together ("never let them see you sweat"), and contributed to a sense of isolation. To the extent there was dialogue about physician distress, the focus was on individuals rather than the system or practice environment … Collectively, all these factors contributed to physicians' professional identity subsuming their human identity.

The Present

The article describes the current era as "characterized by knowledge and awareness" when physician burnout and distress (moral injury, fatigue, exhaustion) "began to be recognized and to have an impact on conversations within the health care delivery system." The current era includes clinician wellbeing as one of the "quadruple aims" of health care and changes in training and practice environments. However, as the article points out,

> the "response … typically remained focused on individual-level solutions and centered on providing treatment for physicians in distress (e. g., mental health resources, peer support) as well as cultivating personal resilience through interventions such as mindfulness stress reduction … This mindset suggested that the only way to relieve physicians from excessive workload and administrative burden was to shift this work to others … (which) would invariably worsen the wellbeing of other members of the health care team, resulting in inaction … (and) Physicians began to express frustration that this approach failed to address the underlying problems in the practice environment that were the core issue.

The Future

The article advocates that the next step should be "characterized by action and system-based interventions to address the root causes of occupational distress" and by shifting the focus "away from individuals towards systems, processes, teams, and leaders." In order for this to occur, the article recommends the following steps at the organizational, professional, and individual levels:

- Physicians and administrators must partner to create practical and sustainable solutions
- Physicians should be accepted as humans and subject to the same human limitations that affect all human beings with attention to appropriate staffing, breaks, and rest
- A mindset must be established at the organizational level that centers on cultivating well-being and preventing occupational distress rather than simply reducing burnout
- Organizations should create a senior leadership position of Chief Wellness Officer to address system-based issues and drive organizational change
- Organizational focus must shift from patient needs to include the needs of all individuals in the practice environment, including creating an organizational environment that attends to leadership, professionalism, teamwork, just culture, voice and input, and flexibility.
- Organizations should transition from viewing wellness as a necessary cost to a core organizational strategy
- Resource allocation should shift from return on investment to value on investment
- Clinicians' culture should shift focus from one of wellness to a culture of vulnerability, self-compassion, and mutual support
- At the professional level, physicians should embrace the "physician as human mindset" instead of the "physician as hero mindset" and reject the culture of "perfectionism" and cultivate the culture of humanism, healthy boundaries, appropriate limits to work, work-life integration, and attention to personal needs
- Organizations should foster an environment of trust, one that creates sustainable workloads, provides coverage when clinicians are ill, and incorporates breaks and rest

The Board supports these recommendations for action by individuals, the profession, and health care organizations to improve clinician health and wellness.

BOARD NEWS

Board Rule Updates

>Chapter 6 “Telemedicine Standards of Practice” is an existing joint rule with the Board of Osteopathic Licensure. **The Board is proposing repealing and replacing Chapter 6 with Chapter 11 “Telemedicine Standards of Practice”** that will be a joint rule with the Board of Osteopathic Licensure and the State Board of Nursing.

The proposed update to the joint rule will implement P.L. 2021, c. 291, which requires licensing boards, including the Board of Licensure in Medicine, Board of Osteopathic Licensure, and State Board of Nursing to adopt rules governing telehealth services by their licensees, to include “standards of practice and appropriate restrictions.” The proposed updates: change the chapter number and title of the rule from “Chapter 6 Telemedicine Standards of Practice” to “Chapter 11 Joint Rule Regarding Telehealth Standards of Practice”; update definitions to comport with definitions in P.L. Chapter 291 (to allow for audio-only encounters when appropriate); and include terminology and requirements applicable to nurses.

The original rule (previously Chapter 6) was developed using the professional judgement of the Board of Licensure in Medicine and Board of Osteopathic Licensure; research conducted on telemedicine rules in other jurisdictions, including a telemedicine rule adopted by the Iowa Board of Medicine; the Federation of State Medical Board’s Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine; the Board of Licensure in Medicine’s Telemedicine Guidelines; and input solicited from representatives of the Maine Medical Association, and the Maine Hospital Association. The amendments to the rule (now Chapter 11) were based upon Public Law Chapter 291 “An Act Regarding Telehealth Regulations.”

Chapter 12 “Joint Rule Regarding Office Based Opioid Treatment of Opioid Use Disorder” is an existing joint rule with the Board of Osteopathic Licensure and State Board of Nursing. The Boards are proposing amendments to the joint rule regarding office-based treatment of opioid use disorder. The proposed amendments: eliminate gender terms, change the term “medical records” to “patient records,” and update the definition of telemedicine to telehealth to comport with the definition in 2021 P.L. Chapter 291 enacted June 21, 2021.

The rules will be published by the Secretary of State on November 10, 2021, and will be posted on the Boards’ websites. Once the rules are published, comments regarding the proposed changes to the rules can be provided to the Board until December 10, 2021 by submitting them to:

Kimberly S. Esquibel, PhD, MSN, RN, Executive Director, Maine State Board of Nursing Kim.Esquibel@maine.gov

Susan Strout, Executive Secretary, Maine Board of Osteopathic Licensure Susan.E.Strout@maine.gov

Dennis E. Smith, Esq., Executive Director, Maine Board of Licensure in Medicine dennis.e.smith@maine.gov

FROM THE EDITOR

Recommended Reading

Danielle Ofri, MD. *When We Do Harm: A Doctor Confronts Medical Error*. 2020

Dr. Ofri (NYU School of Medicine and Bellevue Hospital) is a gifted clinician and an equally gifted narrator/explicator of present and potential sources of error in the US medical system.

Dr. Ofri spent several years reading research on individual- and system-based errors and interviewing patients, families, doctors, lawyers, nurses, administrators, researchers, and patient-safety advocates. Her takeaway is that “medical error and adverse events (even ones that aren’t errors per se) are much more prevalent than we think. The majority may not cause significant harms, but enough do, enough that the issue needs to be front and center in healthcare today.”

“Mandatory reporting would likely backfire, and voluntary reporting catches only a small subset of errors. The only way to make such a system workable and accurate is to create a culture in which reporting an adverse event is a routine and ordinary event for medical professionals, just like – ahem – washing your hands before touching a patient. Obviously, this would require a culture shift of enormous proportions, but that is the goal we should be striving toward.”

Medical errors are inevitable, given the sea of salient information, time constraints, and human brain limitations (e.g., tunnel vision, overconfidence, biases, etc.) in any given patient encounter. Dr. Ofri knows it is best to admit this and she suggests ways to develop strategies to do better.

Editor-in-Chief David Nyberg, Ph.D. Graphic Design Ann Casady

Credit

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